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CONSUMER BANKRUPTCY

Everything That Can Go Wrong With the Meeting of Creditors

Part Two: Issues with the Trustee

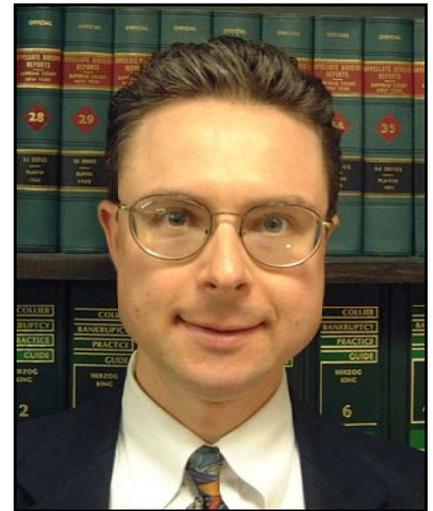
by Craig D. Robins, Esq.

In my column last month, I addressed some common problems that come up at the Meeting of Creditors. This month I will focus on additional problems involving the trustee. Many problems can be reduced or eliminated by making sure that you and your client are prepared, by preparing the petition correctly, and by making sure that you and your client are considerate and respectful towards the trustee.

Problem No. 8: The Trustee Thinks the Debtor Is Being Disrespectful. Advise your clients to avoid any sarcasm or joking at the hearing. What may be taken as amusing by one trustee, may be seen as disrespectful and annoying by another. If the trustee reacts in a negative or hostile way towards the debtor for any reason, try to immediately neutralize the situation,

perhaps by interjecting that the debtor is nervous and didn't mean to come across the way that they did.

Problem No. 9: The Trustee Wants to Adjourn the Meeting Because the Trustee Never Received a Copy of the Petition. With the advent of Electronic Case Filing, the debtor's attorney is obligated to immediately mail a hard copy of the petition to the trustee which should contain the signatures of the debtors and their counsel. If the trustee does not receive a copy sufficiently in advance of the meeting, the trustee may adjourn the hearing and make you come back. Always make sure you timely mail a copy of the petition to the trustee. (Note that you are also required to mail a hard copy to the U.S. Trustee). If the trustee wants to send you home,



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consider pleading for sympathy and offer the trustee your copy.

Problem No. 10: The Trustee Announces That the Debtor Must Turn Over an Asset. This situation almost only arises when the debtor's attorney is not a regular bankruptcy practitioner. Counsel must be familiar with the concept of exemptions and how local practice and procedure treats them. For example, if a debtor has a car that contains a large amount of non-exempt equity, it becomes property of the estate and the trustee is theoretically entitled to take possession of it. Almost all trustees will seek to negotiate a settlement to enable the debtor to keep the non-exempt asset. However, if the car is

not insured, the trustee may not even let the debtor drive it away. If you have to file a petition in a case where there are significant non-exempt assets, make sure your client knows what to expect. You should review with your client any assets that may not be totally exempt, such as liquid assets and entitlement to tax refunds, pending accident cases or causes of action, and the right to inherit from a pending estate.

Problem No. 11: The Trustee is Going Crazy Because the Debtor Is Speaking Too Softly.

All hearings are recorded. The debtor must talk loud enough to make sure his or her voice is being recorded. The debtor must also talk clearly. If the trustee asks a yes-or-no question, the debtor must answer vocally, rather than just nod the head. You should tell your client in advance to speak up, answer all questions, and speak clearly.

Problem No. 12: The Trustee Wants to Adjourn the Meeting and Have Debtor Return to Be Re-Examined.

Some debtor situations can be rather complex, and may involve businesses, pre-petition transfers of real estate or other assets, or preferential payments. In such instances, the trustee may want to investigate the information just provided, or may request additional information. If the trustee directs the debtor to re-appear for an adjourned Meeting of Creditors, consider fully cooperating with the trustee by expeditiously providing any additional documents. Then call the trustee a few days prior to the adjourned date to see if the trustee will consider waiving appearances for the adjourned date.

Problem No. 13: The Trustee Announces That He Is Making a "707(b) Referral" to the U.S. Trustee.

If a trustee feels that a debtor has filed a petition in bad faith

or that the filing is an abuse, the trustee does not have the power to take any further action other than to refer the matter to the Office of the United States Trustee for further review. Sometimes the trustee may tell you, after examining the budget or the amount of debt, that he is making a "707(b) referral." If that happens, expect to receive a detailed request from the U.S. Trustee to audit and investigate the case.

Problem No. 14: The Trustee is on the War Path.

Trustees are human too and can be in a bad mood for a variety of reasons. I have witnessed many trustees in a bad mood, sometimes compounded by frustration caused by recalcitrant debtors or slow-moving calendars. If the trustee is in a bad mood, it is vital not to tick the trustee off. Many a trustee has yelled at attorneys for talking in the hearing room. If you need to talk, take your client or fellow attorney outside the room. Be considerate and use common sense.

Problem No. 15: The Trustee Does Not Like the Way You Prepared the Petition.

This is another situation that almost exclusively arises when the debtor's attorney is not a regular bankruptcy practitioner. Trustees expect a certain level of professionalism. If the petition is sloppily prepared, lacks necessary information, or contains incorrect information, contains incorrect exemption statutes, or is not properly prepared, the trustee may direct the attorney to re-do it, and may even refuse to examine the debtor until the petition is done correctly.

The trustee can also refer the attorney to the U.S. Trustee's Office to be investigated, as that office is responsible for maintaining the professionalism of the bankruptcy bar. Remember, one of the purposes of the Meeting of

Creditors is for the trustee to check the accuracy of the information in the petition. The bottom line: If you file a petition, make sure you know what you are doing, and do it right. Then proof-read it before having the debtor execute it.

*Editor's Note (revised 2008):
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